

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JESSE LEE BRYANT #598905, JR.,

Petitioner,

Case No. 1:10-CV-772

v.

HON. GORDON J. QUIST

CAROL HOWES,

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION
AND DENYING PETITION FOR WRIT OF HABEAS CORPUS**

On June 22, 2012, the Magistrate Judge issued a Report and Recommendation (R & R), (docket no. 27), to which Petitioner has filed objections. (Docket no. 30.) For the reasons set forth below, Petitioner's objections will be overruled, the R & R will be approved and adopted as the opinion of the Court, and Petitioner's petition will be denied

On April 4, 2011, the Magistrate Judge issued a previous R & R which determined that Petitioner's petition asserts "a single claim, that Petitioner was denied the right to effective assistance of counsel on the grounds that his attorney: (1) failed to challenge the admissibility of the statements Petitioner made to the police following his arrest; and (2) failed to request that Petitioner undergo a forensic examination to assess criminal responsibility and competency to stand trial." (Docket no. 21.) Neither Petitioner nor Respondent objected to the Magistrate Judge's determination that Petitioner's petition asserts a single viable claim. The undersigned approved and adopted this determination as the opinion of the Court. (Docket no. 22.)

On June 22, 2011, the Magistrate Judge issued the R & R that is now at issue. The R & R addressed the substance of Petitioner's claim. Ultimately, the R & R recommended that Petitioner's petition be denied.

Petitioner objects that the R & R does not address the other claims that he asserted in his habeas petition. Petitioner then attempts to argue the merits of his claims that the April 11, 2011, R & R determined were not properly exhausted. Petitioner also objects that he did not exhaust all of his habeas claims to state courts because he received ineffective assistance of counsel. These objections go to the issue addressed by the Magistrate Judge in her April 11, 2011, R & R, to which Petitioner did not object.¹ In sum, Petitioner has not filed any objection to the conclusions in the June 22, 2012, R & R and, therefore, Petitioner's objections will be overruled. *See Allen v. Ohio Dept. of Rehab. & Corr.*, 202 F.3d 267, 1999 WL 1336100, at *1 (6th Cir. Dec. 20, 1999) (affirming the denial of objections because "[t]he district court properly found that Allen did not address the magistrate judge's conclusions in his objections").

Under 28 U.S.C. § 2253(c)(2), the Court must also determine whether a certificate of appealability should be granted. A certificate should issue if Petitioner has demonstrated a "substantial showing of a denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The Sixth Circuit has disapproved issuance of blanket denials of a certificate of appealability. *Murphy v. Ohio*, 263 F.3d 466, 467 (6th Cir. 2001). Rather, the district court must "engage in a reasoned assessment of each claim" to determine whether a certificate is warranted. *Id.* at 467. Each issue must be considered under the standards set forth by the Supreme Court in *Slack v. McDaniel*, 529 U.S. 473, 120 S. Ct. 1595 (2000). *Murphy*, 263 F.3d at 467. Consequently, this Court has examined Petitioner's claims under the *Slack* standard.

Under *Slack*, 529 U.S. at 484, 120 S. Ct. at 1604, to warrant a grant of the certificate, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." For the reasons stated above, the Court finds that

¹ Insofar as Petitioner is attempting to object to the April 11, 2011, R & R, the objections are not timely.

reasonable jurists could not find that this Court's dismissal of Petitioner's claim was debatable or wrong. Thus, the Court will deny Petitioner a certificate of appealability.

THEREFORE, IT IS ORDERED that Petitioner's Objections (docket no. 30) are **overruled**.

IT IS FURTHER ORDERED that the Report and Recommendation of the Magistrate Judge, filed June 22, 2012, (docket no. 27), is **approved** and **adopted** as the opinion of the Court.

IT IS FURTHER ORDERED that Petitioner's petition for writ of habeas corpus (docket no. 1) is **denied**.

IT IS FURTHER ORDERED that a certificate of appealability is **denied** by this Court.

Dated: August 24, 2012

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE